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Oblon/Corelogic Inc.
1940 Duke Street
Alexandria, VA 22314

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEBRA ROTHROCK, AJAINATH NAIR,
RAO MYLAVARAPU, and HAMIN BALAPORIA

Appeal 2016-005681
Application 13/944,605[1]
Technology Center 3600

Before DENISE M. POTHIER, LARRY J. HUME, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 8–13, and 20–24, which are all claims pending in the application. Appellants have canceled claims 2–7, 14–19, and 25. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] According to Appellants, the real party in interest is CORELOGIC SOLUTIONS, LLC. Br. 1.

STATEMENT OF THE CASE[2]

The Invention

Appellants' disclosed embodiments and claimed invention "relate[] to systems, methods and computer program product for developing and reporting enhanced credit reports. The enhanced credit reports contain supplemental material above and beyond that disclosed in credit reports provided by various credit bureaus." Spec. 1, ll. 15–18.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal:

> 1. A method for generating an enhanced credit report, comprising:
>
> receiving via a network communication channel, a credit request for an enhanced credit report, wherein the credit request includes identifying data of a consumer;
>
> extracting from a data repository consumer data that is associated with the identifying data contained in the credit request;
>
> storing in a first memory device consumer data within or as a section of a conventional credit report provided by a major credit bureau;
>
> querying another data repository for supplemental credit data that is associated with the consumer data and not included

[2] Our decision relies upon Appellants' Appeal Brief ("Br.," filed Nov. 2, 2015); Examiner's Answer ("Ans.," mailed Feb. 29, 2016); Final Office Action ("Final Act.," mailed Apr. 30, 2015); and the original Specification ("Spec.," filed July 17, 2013). We note Appellants did not file a Reply Brief in response to the factual findings and legal conclusions in the Examiner's Answer.

> within or as a section of a conventional credit report provided by a major credit bureau, the querying including comparing the consumer data to at least one of consumer property ownership information, mortgage obligation records, a property legal filing made at a courthouse, an indication of a credit liability on the enhanced credit report based on the property legal filing made at the courthouse, a rental application, rent collection, eviction status, at least one of inquiries, loans and charge-offs of pay-day or alternative credit lenders, consumer-specific bankruptcy, liens, judgements, child-support obligations, and a property tax payment status;
>
> merging with enhanced credit report processing circuitry the supplemental credit data and at least a portion of credit information included in the conventional credit report and producing a Federal Fair Credit Reporting Act compliant[3] enhanced credit report that contains the supplemental credit data, and an enhanced credit score.

Rejection on Appeal

Claims 1, 8–13, and 20–24 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Ans. 2.

CLAIM GROUPING

Based on Appellants' arguments (Br. 4–16), we decide the appeal of the § 101 rejection of claims 1, 8–13, and 20–24 on the basis of representative claim 1.[4]

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[3] In the event of further prosecution, we invite the Examiner's attention to the recitation in claim 1 of "a Federal Fair Credit Reporting Act compliant enhanced credit report" to determine compliance with the definiteness requirements of 35 U.S.C. § 112(b), given that such Federal statutes and regulations may change or have changed over time.

[4] "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the

ISSUE

Appellants argue (Br. 4–16) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Did the Examiner err in concluding claim 1, and claims 8–13 and 20–24 grouped therewith, although directed to statutory subject matter, are rejected under 35 U.S.C. § 101 because the claimed subject matter is judicially-excepted from patent eligibility under § 101?

ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. We do not consider arguments Appellants could have made but chose not to make in the Briefs, and we deem any such arguments waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellants' arguments with respect to claim 1 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and legal conclusions set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons, conclusions, and rebuttals set forth in the Examiner's Answer in response to Appellants' arguments. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

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patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

Appellants contend:

> In summary, the pending claims are patent eligible as they, among other things, compare various data and merge supplemental credit data and conventional credit data and produce an enhanced credit report. As described below in more detail, the claimed invention solves a business challenge and is applicable "to a new and useful end," thereby making it eligible for patent protection. As emphasized in *Alice* that "the claims in *Diehr* were patent eligible because they improved an existing technological process,"[ ] the pending claims are also patent eligible because they improve the process of merging gathered information to produce an enhanced credit report to solve the business challenge of allowing lenders the possibility of having a tool that allows them to proactively determine whether to extend credit based on additional information that is unavailable from conventional credit reports.

Br. 5 (footnote omitted).

Appellants further contend, "independent Claims 1 and 13 are directed to (Step 1) a process and a machine; (Step 2A) are not directed to a judicial exception; and (Step 2B) do recite additional elements that amount to significantly more than a judicial exception *even if* the claims were found to be directed to a judicial exception." Br, 7.

We agree with Appellants' arguments that the claims are directed to a statutory class of invention, i.e., a process (claim 1's method) or a machine (claim 13's system). Br. 7.

However, we disagree with Appellants contentions (*infra*) that (a) the claims are not directed to a judicial exception, i.e., an abstract idea (*Alice* Step 1); and (b) the claims recite significantly more than an abstract idea (*Alice* Step 2).

(a) Alice Step 1—The Claims are Directed to an Abstract Idea

Appellants argue, because claim 1 is directed to a method for generating an enhanced credit report that includes various features and incorporates various types of data from disparate sources, "the present claims cannot be reasonably considered as being directed, on the whole, to 'fundamental economic practices' or any one of the other identified categories." Br. 8. "While an enhanced credit report is produced, the claimed invention is not solely directed to this feature of generating a report. It is respectfully submitted that comparing the consumer data to at least one of consumer property ownership information, mortgage obligation records, ... is not an abstract idea and ***has not been identified as being an abstract idea***." Br. 9.

Appellants generally allege, "[t]he present claims are not directed to a judicial exception, such as an abstract idea." Br. 7. Appellants specifically contend the USPTO's contemporaneous § 101 Examination Guidelines stated "a claimed concept is not identified as an abstract idea ***unless it is similar to at least one concept that the courts have identified as an abstract idea*** . . . , [and i]n the present case, the claimed features are not concepts that have been explicitly identified as abstract ideas." Br. 7 (emphasis in original). Appellants further allege, "none of these [claimed] features are considered 'fundamental economic practices,' as the Office appears to assert." *Id.*

"Whether a patent claim is drawn to patent-eligible subject matter is an issue of law that we review de novo." *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) (citation omitted).

Section 101 provides that anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. Id.

The Supreme Court's two-part *Mayo/Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "buildin[g] block[s] of human ingenuity" and those that "integrate the building blocks into something more." *Alice*, 134 S. Ct. at 2354 (citation omitted). First, we "determine whether the claims at issue are directed to a patent-ineligible concept." *Id.* at 2355. If so, we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). Although the two steps of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.,* 830 F.3d 1350, 1353 (Fed. Cir. 2016)(citations omitted). We note the Supreme Court "has not established a definitive rule to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2357).

However, our reviewing court has held claims ineligible as being directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Alice*, 134 S. Ct. at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.") (citation omitted).

Under the "abstract idea" step we must evaluate "the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs*, 838 F.3d at 1257 (citation omitted).

Turning to the claimed invention, claim 1 recites "[a] method for generating an enhanced credit report." Claim 1 (preamble). The limitations of claim 1 also require the steps of:

> (1) "receiving . . . a credit request for an enhanced credit report;"
>
> (2) "extracting . . . data that is associated with the identifying data contained in the credit request;"
>
> (3) "storing . . . data within or as a section of a conventional credit report;"
>
> (4) "querying . . . for supplemental . . . data . . . associated with the consumer data and not included within . . . a conventional credit report;"

> (5) "[the querying] including comparing . . . data to . . . information [from a variety of sources];"
>
> (6) "merging . . . the supplemental . . . data and at least a portion of . . . information included in the conventional credit report" and
>
> (7) "producing a [different] report that contains the supplemental . . . data, and an enhanced credit score."

In response to Appellants' arguments, the Examiner concludes the claims are abstract, and thus patent-ineligible:

> In this case the claims are directed to a concept of generating a credit report. Generating a credit report (also termed credit worthiness) is old established economic practice and long prevalent in economy. For example, for decades, merchants and credit issuers have relied on credit reports issued by various agencies to determine a consumer's eligibility for extending credit for purchase of major items such as automobiles, homes and like.

Final Act. 3. Further, "[Appellants'] argument is not persuasive because generating an enhanced credit report is a concept that inherently relates to economy and commerce, such as agreements between the enhance[d] credit [ ] report provider and a consumer in the form of a contract, legal obligations and business relations." Ans. 2.

> Additionally, the claims describe an idea standing alone such as a uninstantiated concept, plan or scheme, as well as a mental process that can be performed by a human using a pen and a paper. For example, the limitations, extracting consumer data, storing consumer data, querying another data repository for supplemental credit data and merging the supplemental credit data and at least a portion of credit information are concepts relating processes of obtaining, storing, organizing and transmitting information. Such concepts are found to be abstract ideas in *Cyberfone*, *Content Extraction* and *Cybersource*.

Ans. 3 (italics added).

Under step one, we agree with the Examiner that the inventions claimed in each of independent claims 1 and 13 are directed to an abstract idea, i.e., generating a credit report, which "is old established economic practice . . . long prevalent in [the] economy." Final Act. 3.

As the Specification itself observes, "[t]he present disclosure relates to systems, methods and computer program product for developing and reporting enhanced credit reports. The enhanced credit reports contain supplemental material above and beyond that disclosed in credit reports provided by various credit bureaus." Spec. 1, ll. 15–18.[5]

In agreement with the Examiner, we find this type of activity, i.e., collecting and organizing credit-related *and other supplemental information* includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("That purely mental processes can be unpatentable,

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[5] *See also*, Spec. 33 ("Abstract"):

> A system, method and computer program product cooperate to gather and report information relevant to a consumer's credit that is not typically reported on a credit report from one of the major credit bureaus. By accessing other databases regarding borrower specific financially relevant information (e.g., judgments, liens, rental payment compliance, alternative credit transactions, etc.), enhanced data is available for making better lending decisions. Removal of transactions that would prevent compliance with the Fair Credit Reporting Act is performed, as well as removal of transactions that are erroneous for a particular consumer or include information that are not associated with that particular consumer.

even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.").[6]

Our reviewing court has previously held other patent claims ineligible for reciting similar abstract concepts. For example, although the Supreme Court has altered the § 101 analysis since *CyberSource* in cases like *Mayo* and *Alice*, they continue to "treat[ ] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (alteration in original) (quoting *Elec. Power Grp.*, 830 F.3d at 1354).

In this regard, the claims are similar to claims our reviewing court has found patent ineligible in *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting information and "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category").

Therefore, in agreement with the Examiner, we conclude claim 1 involves nothing more than collecting, storing, comparing, and transmitting data, without any particular inventive technology — an abstract idea. *See Elec. Power Grp.*, 830 F.3d at 1354. We further refer to *Content Extraction*, where the Federal Circuit has provided additional guidance on the issue of statutory subject matter by holding claims to collecting data, recognizing certain data within the collected data set, and storing that recognized data in memory were directed to an abstract idea and therefore unpatentable under

[6] *CyberSource* further guides that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource*, 654 F.3d at 1373.

§ 101. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014).

Accordingly, on this record, and under step one of *Alice*, we agree with the Examiner's conclusion the claims include an abstract idea.

(b) Alice Step 2—The Claims do not Recite Significantly More than the Abstract Idea

Appellants also argue they have solved a business need for enhanced credit reports by "populat[ing standard] . . . credit reports with supplemental information that might predict credit risk." Br. 10. Appellants make additional arguments the Examiner erred, citing limitations in claim 1 that merely compare and merge data, and which purportedly provides a *technological* solution. Br. 11 *et seq*. Additionally, throughout the Brief, Appellants allege "[t]he present claims recite features that are not merely generic" (Br. 14), and go on to quote claim 1's limitations, although contending the USPTO's Examinations Guidelines and July 2015 Update do not mention such limitations as being drawn to an abstract idea.[7]

Appellants further contend:

> Thus, the fact that there are no prior art rejections against the claims, i.e. that the claims recite elements or functions that

[7] Appellants present various arguments based on USPTO examination guidelines and updates. Br. 5 *et seq*. We have considered these guidelines, which are based on controlling case law and USPTO policy at the time the guidelines were issued. However, we note the PTAB applies relevant U.S. Supreme Court and Federal Circuit case law to the facts of each patent application on appeal, and does not rely on guidelines, intended to train Patent Examiners, as controlling legal authority.

> are beyond those recognized in the art, ***is evidence***[8] that the claims recite features that amount to significantly more than merely an abstract idea. In other words, the technological advancements of the claims over the conventional methods and systems corroborate the notion that the claims amount to significantly more than merely an abstract idea.

Br. 16.

The Examiner finds:

> Applicant's argument that merging supplemental credit data with conventional credit report is similar to an e-commerce outsourcing system generating a composite web page [DDR v. Hotels.com . . .] is not persuasive because whereas DDR addressed the problem rooted in computer technology, the instant claims do not present such inventive technological solution.

Final Act. 4. Further in this regard, the Examiner finds:

> First, it is noted that all limitations are implemented on a generic computer [e.g. system claim 1 recites the limitations implemented on a "processing circuitry" which acts as a generic computer] in a generic manner which are well-understood, routine, and conventional activities previously known to the industry. For example, receiving data, extracting data, storing data, querying a data repository and merging two sets of data are all not only well-understood, routine, and conventional limitations implemented on generic computer but also falls into computer functions that courts have recognized to be well-understood, routine and conventional, e.g. receiving,

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[8] The Supreme Court guides: "[t]he 'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter." Diamond v. Diehr, 450 U.S. 175, 188–89 (1981). Our reviewing court further indicates that "even assuming" that a particular claimed feature was novel does not "avoid the problem of abstractness." Affinity Labs of Texas, LLC v. DIRECTV, LLC, 838 F.3d 1253, 1263 (Fed. Cir. 2016).

> processing and storing data [*Alice Corp.*] as well as mental tasks that are automated or computer implemented [*Benson*, *Bancorp*, and *CyberSource*].

Ans. 4–5.

We agree with the Examiner because "the use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter." *FairWarning IP, LLC v. Iatric Sys. Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)).

Therefore, based upon the record before us, we are not persuaded of error in the Examiner's conclusion that claim 1 is drawn to patent-ineligible subject matter under § 101. Therefore, we sustain the Examiner's § 101 rejection of independent claim 1, and grouped claims 8–13, and 20–24, which fall therewith. *See* Claim Grouping, *supra*.

CONCLUSION

The Examiner did not err with respect to the rejection of claims 1, 8–13, and 20–24 under 35 U.S.C. § 101, and we sustain the rejection.

DECISION

We affirm the Examiner's decision rejecting claims 1, 8–13, and 20–24.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED